



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/145061

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on June 05, 2013, via telephone.

The issue for determination is whether a decision by the Division of Hearings and Appeals now as to Petitioner's Family Care Program non-nursing home level of care eligibility and services can have a practical effect.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703
By: Stephanie Edel
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

Petitioner filed four appeals with the Division of Hearings and Appeals in late 2012. The first, filed on October 18, 2012 (# 144597), challenged the discontinuance of Petitioner's Family Care eligibility because she was alleged to no longer meet the functional eligibility requirements for the nursing home level of care. The next three were all filed on November 7, 2012 (#s 145059, 1450661 and 145062) and contested the discontinuance of individual services. A hearing was commenced for all of the appeals on March 7, 2013. Because that hearing lasted almost 2 hours and only finished the issues for the October 18, 2012 appeal, the parties agreed to adjourn the other three matters. An additional reason for the

adjournment was because it was thought that the decision on the October 18 appeal might resolve the other three. A decision was issued for the October 18 appeal on April 11, 2013. That decision concluded that Petitioner no longer met the functional needs requirements necessary to be at the nursing home level of care. That did not, however, dispose of the other three cases because they arguably involved services for which a person who was at the non-nursing home level of care might be eligible for. The issue of whether Petitioner met eligibility requirements for the non-nursing home level of care was not reached at the March 7, 2013 hearing. After Petitioner requested a reschedule of the hearings scheduled for May 7, 2013 they were scheduled for hearing on June 5, 2013. Petitioner again asked that those hearings be rescheduled. That request was denied.

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner filed the instant appeal to contest the discontinuance of supportive home care services.
3. At some point after the April 11, 2013 decision issued by the undersigned, which sustained a discontinuance of Petitioner's Family Care Program nursing home level of care, the case management organization and/or the economic support agency notified Petitioner that she was no longer Medicaid eligible. This also discontinued Petitioner's non-nursing home level of care Family Care eligibility. The effective date of the discontinuance was April 30, 2013.
4. When Petitioner contacted the undersigned on May 1, 2013 to reschedule the May 5, 2013 hearing she indicated that she had filed an appeal of the discontinuance of Medicaid and Family Care non-nursing home level of care eligibility. There was no record of that appeal in the Division of Hearings and Appeals database.
5. As of June 5, 2013 the Division of Hearings and Appeals had no record of an appeal from Petitioner regarding the discontinuance of her Medicaid and non-nursing home level of care for the family care program.

DISCUSSION

A matter is moot if the review sought cannot have a practical effect on the existing controversy. See *Racine v. J-T Enterp.*, 64 Wis. 2d 691, 702; 221 N.W. 2nd 869, 875 (1974).

It is not possible to order backdated provision of services that were not received. Further, with the discontinuance effective April 30, 2013 for which the Division of Hearings and Appeals has no record of an appeal and thus no continued benefits (an appeal must be filed prior to the discontinuance of benefits in order to ask that they be continued; see *Wis. Admin. Code*, § HA 3.04(5)) there is nothing to order going forward.

When Petitioner called to reschedule the May 5, 2013 hearings Petitioner was advised that the Division of Hearings and Appeals had not received an appeal of the April 30, 2013 discontinuance(s). Petitioner was advised at the June 5, 2013 hearing that the appeal had not been received. As of the date of this decision the appeal has not been received. Petitioner contends that she sent it with a return receipt requested but has no tracking number. She is strongly advised to send it in again and, if possible, to fax it to Division of Hearings and Appeals. She was provided with that fax number – again: [REDACTED].

CONCLUSIONS OF LAW

That a Division of Hearings and Appeals decision that affects Petitioner's supportive home services is moot at this time.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of June, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Wayne J. Wiedenhoeft, Acting Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 11, 2013.

Community Care Inc.
Office of Family Care Expansion